Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah

SPECIAL COURT — CIVIL SUIT NO MK(S) 23-01-1994
EUSOFF CHIN CHIEF JUSTICE, ANUAR CJ (MALAYA), CHONG SIEW FAI CJ (SABAH & SARAWAK), MOHD AZMI FCJ AND MOHD SUFFIAN
6 & 7 FEBRUARY 1996

Constitutional Law *— Civil Suit against ruler in his personal capacity — Plaintiff not a Malaysian citizen but Singporean — Commonwealth reciprocity — Territorial effect of laws — Whether plaintiff had right to sue Sultan of Pahang in his personal capacity in Special Court — Federal Constitution art 74(3), art 155, 182 & 183.*

In this case, the plaintiff, who was a Singapore citizen, sued the Sultan of Pahang ('the Sultan') in his personal capacity for alleged libel and for damages in the Special Court established under art 182 of the Federal Constitution. The Attorney General had given his consent to the plaintiff to sue the Sultan under art 183. Both parties agreed that the court should first determine a preliminary issue raised by the defendant, that was whether the plaintiff, not being a Malaysian citizen, had the right to sue the Sultan in his personal capacity in the Special Court.

Held: by a majority of 4:1, allowing the defendant's preliminary objection (Anuar CJ (Malaya) dissenting):

(1) (Per **Eusoff Chin Chief Justice**) The powers of Parliament to make laws were restricted by art 74(3) of the Federal Constitution, which provided that the power to make laws conferred by this article was subject to any conditions or restrictions imposed with respect to any particular matter by the Constitution (see p 624F–G).

(2) (Per **Eusoff Chin Chief Justice**) In this case, Parliament's legislative power was subject to the special provision of art 155 of the Constitution, which provided that where the law in force in any part of the Commonwealth conferred upon the citizens of the Federation any right or privilege it should be lawful, notwithstanding anything in the Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who were not citizens of the Federation. As under the Singapore Constitution, a Malaysian citizen could not sue the President or the Republic in any Singapore court, the plaintiff, being a Singapore citizen, could not be conferred the right to sue the Sultan in this case. Even if Parliament were to confer the right on a Singapore citizen to sue the Yang di-Pertuan Agong or a Ruler, such conferment was illegal and ultra vires art 155 of the Federal Constitution (see p 624E–I).

(3) (Per **Chong Siew Fai (CJ) Sabah & Sarawak**) Having regard to the principle of sovereign immunity in international law, the

immunity of the Rulers existing at least for decades before the formation of Malaysia with its subsequent incorporation in the Federal Constitution, and the concept of reciprocity, it was concluded that the ambiguous or imprecise wording in art 182(2) of the Federal Constitution did not entitle the plaintiff, as a citizen of the Republic of Singapore, to sue the Ruler in the latter's personal capacity (see p 628C).

(4) (Per **Mohd Azmi FCJ**) In the absence of express provision, and as there was doubt in the meaning of the words used in art 181(2) and the intention of Parliament and the Conference of Rulers, the presumption of continuity of the Rulers' privilege, sovereignty, prerogative and legal immunity must prevail, as far as foreign citizens were concerned (see p 634D).

(5) (Per **Mohd Suffian**) Article 155 rendered art 182(3) void to the extent that it purported to allow a non-citizen to sue a Ruler in the Special Court. If Singapore were to amend its Constitution to allow a Malaysian citizen to sue the President in Singapore, the Malaysian Parliament might confer on a Singapore citizen a similar right or privilege to sue a Ruler in our country (see p 636D–F).

(6) (Per **Anuar CJ (Malaya)**, dissenting) Article 155(1) did not prohibit Parliament from enacting a law giving a non-citizen a right to sue a Ruler in Malaysia. There was no provision that art 182 was to be 'subject to the provisions of the Constitution' and therefore, it was not subject to art 155 (see pp 637C and 638C).

[Bahasa Malaysia summary

Dalam kes ini, plaintif, yang merupakan seorang warganegara Singapura, telah mendakwa Sultan Pahang ('Sultan tersebut') dalam keupayaan peribadinya untuk libel dan ganti rugi di Mahkamah Khas yang diwujudkan di bawah fasal 182 Perlembagaan Persekutuan. Peguam Negara telah memberikan keizinan kepada plaintif untuk mendakwa Sultan tersebut di bawah fasal 183. Kedua-dua pihak bersetuju bahawa mahkamah harus pertamanya, menentukan suatu isu permulaan yang dibangkitkan oleh defendan, iaitu sama ada plaintif, yang bukan merupakan seorang warganegara Malaysia, mempunyai hak untuk mendakwa Sultan tersebut dalam keupayaan peribadinya di Mahkamah Khas.

Diputuskan oleh majoriti 4:1, membenarkan bantahan permulaan defendan (Anuar HB (Malaya) menentang):

(1) (Oleh **Eusoff Chin KHN**) Kuasa Parlimen untuk membuat undang-undang adalah dihadkan oleh fasal 74(3) Perlembagaan Persekutuan, yang memperuntukkan bahawa kuasa untuk membuat undang-undang yang diberi oleh fasal tersebut tertakluk kepada apa-apa syarat atau sekatan yang dikenakan oleh Perlembagaan ke atas sesuatu perkara tertentu (lihat ms 624F–G).

(2) (Oleh **Eusoff Chin KHN**) Dalam kes ini, kuasa perundangan Parlimen adalah tertakluk kepada peruntukan istimewa fasal 155 Perlembagaan tersebut, yang memperuntukkan bahawa jika undang-undang yang berkuatkuasa di mana-mana bahagian Komanwel yang lain memberi apa-apa hak atau keistimewaan kepada warganegara Persekutuan maka adalah sah bagi Parlimen memberi sesuatu hak atau keistimewaan yang serupa itu kepada warganegara dari bahagian Komanwel itu yang bukan warganegara Persekutuan walau apa pun peruntukan yang terkandung dalam Perlembagaan ini. Oleh kerana di bawah Perlembagaan Singapura seorang warganegara Malaysia tidak boleh mendakwa Presiden atau Republik di mana-mana mahkamah Singapura, plaintif yang merupakan seorang warganegara Singapura tidak boleh diberi hak untuk mendakwa Sultan tersebut dalam kes ini. Sekalipun Parlimen memberi hak kepada seorang warganegara Singapura untuk mendakwa Yang di-Pertuan Agong atau seseorang Raja, pemberian sebegini adalah menyalahi undang-undang dan ultra vires fasal 155 Perlembagaan Persekutuan (lihat ms 624E–I).

(3) (Oleh **Chong Siew Fai HB (Sabah & Sarawak)**) Setelah mengambil kira prinsip kekebalan kedaulatan dalam undang-undang antarabangsa, kekebalan Pemerintah yang wujud, setidak-tidaknya untuk dekad sebelum penubuhan Malaysia, dan penggabungannya dalam Perlembagaan Persekutuan kemudian; dan konsep kesalingan, adalah diputuskan bahawa ketaksaan atau ketidaktepatan perkataan dalam fasal 182(2) Perlembagaan Persekutuan tidak memberikan plaintif hak sebagai warganegara Republik Singapura, untuk mendakwa Pemerintah yang berkenaan dalam keupayaan peribadi baginda (lihat ms 628C).

(4) (Oleh **Mohd Azmi HMP**) Dalam ketiadaan peruntukan nyata, dan oleh kerana terdapat keraguan dalam makna perkataan yang digunakan dalam fasal 181(2) dan niat Parlimen dan Persidangan Pemerintah-Pemerintah, anggapan kesinambungan hak istimewa, kedaulatan, prerogatif dan kekebalan undang-undang harus wujud, sejauh mana ia adalah berkenaan dengan warganegara asing (lihat ms 634D).

(5) (Oleh **Mohd Suffian**) Fasal 155 menjadikan fasal 182(3) batal setakat ia bermaksud untuk membenarkan seorang bukan warganegara untuk mendakwa seorang Pemerintah dalam Mahkamah Khas. Jika Singapura meminda perlembagaannya untuk membenarkan seorang warganegara Malaysia untuk mendakwa Presiden Singapura, Parlimen Malaysia mungkin boleh memberikan seorang warganegara Singapura hak atau keistimewaan yang sama untuk mendakwa seorang Pemerintah dalam negara kita (lihat ms 636D–F).

(6) (Oleh **Anuar HB (Malaya)**,menentang) Fasal 155(1) tidak menghalang Parlimen daripada membuat undang-undang yang memberi seorang bukan warganegara hak untuk mendakwa seseorang Raja di Malaysia. Tidak terdapat peruntukan bahawa

fasal 182 adalah 'tertakluk kepada peruntukan-peruntukan Perlembagaan' dan oleh yang demikian, ia tidak tertakluk kepada fasal 155 (lihat ms 637C dan 638C).]

Cases referred to

Abdul Hamid v PP [1956] MLJ 231
CEB Draper & Son Ltd v Edward Turner & Son Ltd [1964] 3 All ER 148
Dato Menteri Othman bin Baginda v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29
Datuk Hj Harun bin Hj Idris v PP [1977] 2 MLJ 155
Davidsson v Hill [1901] 2 KB 606
Duff Development Co Ltd v Government of Kelantan & Anor [1924] AC 797
Duport Steels Ltd & Ors v Sirs & Ors [1980] 1 WLR 142
Farrell & Anor v Alexander [1977] AC 59
General Iron Screw Collier Co v Schurmanns (1860) 70 ER 712
Jeffreys v Boosey (1854) 4 HLC 815
Lee Lee Cheng v Seow Peng Kwang [1960] MLJ 1
Malaysian Bar & Anor v Government of Malaysia [1987] 2 MLJ 165
Mighell v Sultan of Johore [1894] 1 QB 149
Minister of Home Affairs & Anor v Fisher & Anor [1980] AC 319
Shatrughan Singh & Anor v Kedar Nath (1944) 31 AIR Allahabad 126
Sultan of Johore v Abubakar Tunku Aris Bendahara [1952] AC 318
Trendtex Trading Corp Ltd v Central Bank of Nigeria [1977] 1 All ER 881
Veerabhadrappa v Firm of Marwadi Vannajee Vajanjee & Ors [1918] AIR Mad 1100

Legislation referred to

Constitution (Amendment) Act 1993 (Act A848)
Federal Constitution arts 1(1), 8(1), 9, 10(1), 11(1), (2), 12(1), (3), 13(1), 17, 32(1), 36, 38(4), 68, 71(1), 73(a), 74(4), 121, 131A, 155(1), 159(5), 160(2), 181(1), (2), 182(1), (2), (3), 183, Pts II, IX
Courts of Judicature Act 1964
Pahang State Constitution arts 2, 36, Pt I
Prevention of Corruption Act 1961 s 27
Rules of the High Court 1980 O 18 rr 7, 11
Merchant Shipping Act 1854 [UK]

Karpal Singh (Manjit Singh, M Manoharan and *Jagdeep Singh Deo* with him)(*Karpal Singh & Co*) for the plaintiff.

Dominic Puthucheary (Mubashir Mansor and *Bastian Vendargon* with him)(*Skrine & Co*) for the defendant.

7 February 1996

Eusoff Chin Chief Justice: Faridah Begum bte Abdullah ('the plaintiff'), a businesswoman, is a Singapore citizen holding Singapore passport No 0484982E. She is suing the Sultan of Pahang ('the Sultan') in his personal capacity for alleged libel and for damages in the Special Court established under art 182 of the Federal Constitution ('the Constitution'). The Attorney General had given his consent to the plaintiff to sue the Sultan under art 183.

Before us, both parties agreed that this court should first determine a preliminary issue raised by the defendant which is: whether the plaintiff, not being a Malaysian citizen, has the right to sue the Sultan in his personal capacity in the Special Court. Since this is purely a question of law, it is not necessary for me to go into the facts leading to this suit.

Datuk Dominic Puthucheary, the learned counsel for the Sultan, submitted that art 182 of the Constitution does not specifically authorize a non-Malaysian citizen to sue the Yang di-Pertuan Agong or the Ruler of a state (hereinafter, a 'Ruler'). Mr Karpal Singh, the learned counsel for the plaintiff, submitted that since art 182 of the Constitution does not expressly prohibit a non-Malaysian citizen to sue a Ruler, the plaintiff therefore has the right to sue the Sultan, subject to prior consent of the Attorney General. He said that, if art 182 had intended that only Malaysian citizens are given the right to sue a Ruler, this article would have been worded like those found in arts 8, 9, 10 and 12 of the Constitution which specifically mention the word 'citizen'.

It is necessary to refer to the relevant articles in the Constitution.

Article 181(1) of the Constitution preserves and protects the sovereignty, prerogatives, powers and jurisdiction of a Ruler. It states:

> 181(1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.

Before 30 March 1993, the Yang di-Pertuan Agong and a Ruler could not be sued at all nor charged with a criminal offence in his personal capacity. This was provided by arts 32(1) and 181(2) of the Constitution. However, by Act A848 and effective on 30 March 1993, Parliament amended these articles by adding the words 'except in the Special Court established under Part XV':

> 32(1) There shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings

whatsoever in any court *except in the Special Court established under Part XV.*

181(2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity *except in the Special Court established under Part XV.*

This amendment took away the immunity of the Yang di-Pertuan Agong and a Ruler from being sued or charged with a criminal offence, but the proceedings must be brought in the Special Court. Article 182(3) of the Constitution confers exclusive jurisdiction on the Special Court to try all offences committed by a Ruler and all civil cases brought by, or against, a Ruler.

By Act A848 too, Parliament amended the Constitution by introducing Pt XV which contains arts 182 and 183, and I quote the following relevant provisions of art 182:

182(1) There shall be a court which shall be known as the Special Court and shall consist of the Chief Justice of the Federal Court, who shall be the Chairman, the Chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers.

(2) Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).

It is not disputed that these amendments had been passed by Parliament with the consent of the Conference of Rulers given under art 38(4) of the Constitution, which states:

38(4) No law directly affecting the privileges, position, honours or dignitiesof the Rulers shall be passed without the consent of the Conference of Rulers.

Both counsel also agreed that the terms of the Rulers' consent are as expressed in arts 181, 182 and 183. It, therefore, falls on this court to interpret and to determine whether the right to sue a Ruler is to be confined to Malaysian citizens only, or is it also conferred on non-citizens.

The word 'citizen' under art 160(2) of the Constitution means citizen of the Federation, and the word 'Federation' under art 1(1) means 'The Federation of States in Malaysia'.

Parliament's power to make laws is given by arts 73 and 74 of the Constitution, and I quote the relevant provisions:

73 In exercising the legislative powers conferred on it by this Constitution —

(a) Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation;

A 74(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

B The general presumption is that Parliament's legislative competence is normally restricted to territorial nexus, and that statutes are not intended, in the absence of clear express language, to operate on events taking place or on persons outside the territories to which the statutes are expressed to apply.

C In *CEB Draper & Son Ltd v Edward Turner & Son Ltd* [1964] 3 All ER 148 at pp 150 and 152, it was held that an Act of the United Kingdom Parliament, unless it provided otherwise, applies to the whole of United Kingdom and to nothing outside it.

But in Malaysia, art 73(a) of the Constitution allows Parliament to make laws having effect outside Malaysia. An example of this is to be D found in s 27 of the Prevention of Corruption Act 1961, which expressly provides that the provisions of that Act shall, in relation to citizens, have effect outside as well as within Malaysia.

The other presumption is that a statute is not intended to apply to persons outside the territories of a country enacting it. It is particularly E strong in the case of foreigners, for, as to them, the normal presumption is further strengthened by another presumption that the legislature intends to respect the rules of international law. In *General Iron Screw Collier Co v Schurmanns* (1860) 70 ER 712 at p 716, Page Wood VC held that a foreigner could not avail himself of the privilege of the Merchant Shipping Act 1854.

F In *Jeffreys v Boosey* (1854) 4 HLC 815 at p 970, Lord Brougham held:

> Generally we must assume that the legislature confines its enactments to its own subjects, over whom it had authority, and to whom it owes a duty in return for their obedience. Nothing is more clear than that it may also G extend its provisions to foreigners in certain cases, and may without express words, make it appear that such is the intendment of those provisions. But the presumption is rather against such intendment.

In *Davidsson v Hill* [1901] 2 KB 606 at p 612, Kennedy J held the view that in cases in which foreigners had been held not entitled to take H advantage of an English Act, the 'statutory enactment under consideration was one which related to matter of a special and exceptional kind.'

The Constitution still preserves by art 181(1) the sovereignty, prerogatives, powers and jurisdiction of the Rulers, and art 181(2) provides the narrow exception that if a Ruler is to be sued, the proceedings must be I brought in the Special Court established by art 182(1). This Special Court is conferred exclusive jurisdiction by art 182(3) to try civil cases brought by or against a Ruler, which means that the courts established under art

121 of the Constitution cannot try such cases at all. Therefore, the amendment to art 181(2) and the introduction of art 182 are matters 'of a special and exceptional kind'; and are not intended to give rights to a person who is not a citizen of Malaysia, unless art 182 so expressly provides by clear and unambiguous language.

Datuk Dominic Puthucheary drew the court's attention to art 155 of the Federal Constitution, which states:

> 155(1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege *it shall be lawful*, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation. (Emphasis added)

Singapore, formerly a British colony, became a fully self-governing, independent sovereign country on 9 August 1965, is a Member of the Commonwealth (see 6 *Halsbury's Laws of England* (4th Ed) para 810) and is recognized as such by the Yang di-Pertuan Agong of Malaysia.

Article 17 of the Constitution of the Republic of Singapore provides that the President of the Republic of Singapore is not liable to any proceedings whatsoever in any court. A Malaysian citizen, therefore, cannot sue the President of Singapore in any Singapore court. Indeed, the Ruler of a Malay State cannot even be sued by anyone in a Singapore court unless the Ruler waives his immunity (see *Sultan of Johore v Abubakar Tunku Aris Bendahara & Ors* [1952] AC 318).

Therefore, even if Parliament were to confer by express language under art 182, any right on a Singapore citizen to sue the Yang di-Pertuan Agong or a Ruler, such conferment of right is unlawful under art 155 and is of no effect, unless similar right is given to a Malaysian citizen in Singapore to sue the Singapore President. It is true that our Parliament has wide legislative powers to make laws under arts 73(a) and 74 of the Constitution. But such power is restricted by art 74(3) which states:

> 74(3) The power to make laws conferred by this Article is exercisable *subject to any conditions or restrictions imposed* with respect to any particular matter *by this Constitution.*

In this particular case, Parliament's legislative power is subject to the special provision of art 155 of the Constitution, so that even if Parliament were to confer a right on a Singapore citizen to sue the Yang di-Pertuan Agong or a Ruler, such conferment of right is illegal and ultra vires art 155.

I therefore hold that the plaintiff, being a Singapore citizen, has no right to sue the Sultan in this case. Consequently, I make the order that this civil suit be dismissed with costs.

Mr Karpal Singh has also submitted to us that this suit was filed with the consent of the learned Attorney General given under art 183 of the Federal Constitution, which states:

A

> 183 No action, civil or criminal, shall be instituted against the Yang di-Pertuan Agong or the Ruler of a State in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney General personally.

B Mr Karpal Singh argued, quoting *Abdul Hamid v PP* [1956] MLJ 231 at p 232, that a consent, as opposed to a sanction, requires full consideration of the particular case. It is 'an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side' (1 *Stroud* (3rd Ed) p 582). I quite agree with the distinction between 'consent' and 'sanction'. But, it must be appreciated that when the learned Attorney General was considering to give or to refuse his consent, he did so alone C without the benefit of arguments of learned counsel as had happened in this court. An application to the learned Attorney General under art 183 is made by the intended plaintiff, most probably accompanied by a statement of claim which normally contains, in summary form, the material facts on which the party pleading relies for his claim (O 18 r 7 of the Rules of the D High Court 1980). Unless the plaintiff raises a point of law under r 11 of the same Order, the learned Attorney General may overlook giving consideration to it, just as what the court would have done had this issue of citizenship not been raised before us. Therefore, the granting of his consent by the learned Attorney General under art 183 of the Federal Constitution does not preclude any party raising any preliminary issue E before the court.

7 February 1996

Chong Siew Fai CJ (Sabah & Sarawak): The plaintiff, who was, and is, not a citizen of Malaysia, filed on 30 December 1994, the writ in this F action against His Royal Highness the Sultan of Pahang (hereinafter referred to as 'the Ruler') claiming, inter alia, injunction and damages for defamation in respect of words contained in an affidavit affirmed on 23 July 1993 by the Ruler's attorney and filed in Originating Summons No 24–148–93 in the High Court in Kuantan. The plaintiff contends that the G Ruler had authorized the affirmation and filing of the said affidavit of the attorney.

The said originating summons filed in the High Court in Kuantan seeks the removal of a caveat, and the facts therein are not relevant to our present proceedings.

H The words complained of and alleged to be defamatory are reproduced in para 8 of the statement of claim in this action which reads:

> 8 The plaintiff pleads para 14 of the said affidavit states:
>
> After the transfer, Faridah on 7 April 1993 entered another caveat vide caveat No 439/93 (fifth caveat) on the said land on grounds that the said land was sold to His Royal Highness without her knowledge. That I is a blatant lie as the above facts prove it. Faridah was represented by counsel and any allegation of undue influence, pressure and threats

against her safety are totally untrue and groundless. She is now trying to harass His Royal Highness and becoming a nuisance even after settlement.

Paragraph 9 of the statement of claim states:

9 The plaintiff pleads as the defendant acted unconstitutionally in having filed proceedings against the plaintiff in the High Court in Malaya at Kuantan, the said affidavit does not attract immunity and the plaintiff can lawfully commence proceedings against the defendant for defamation.

At the hearing before us on 18 September 1995, the sole issue for determination was whether the plaintiff, a non-citizen, had the right to commence this action against the Ruler in the latter's personal capacity in the Special Court established under art 182(1) of the Federal Constitution.

I have read the judgments of Eusoff Chin Chief Justice, and my brother judges Mohd Azmi FCJ and Tun Mohd Suffian, and I agree with their conclusions.

Mr Karpal Singh, counsel for the plaintiff, drew our attention to various articles in the Federal Constitution, some of which contained the word 'citizen' (eg arts 9, 10(1), 12(1)), while others used the word 'person' (eg arts 11(1), (2), 12(3), 13(1)). Though the distinction between 'person' and 'citizen' is beyond question, art 182(2) of the Federal Constitution employs none of those words. Article 182(2) reads:

182(2) Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).

It falls short of expressing whether the proceedings are available to citizens only or to all persons including foreigners. In the circumstance, the issue is open to construction. As stated earlier, the question is whether the plaintiff, as a foreigner, ie a citizen of the Republic of Singapore, is entitled to sue the Ruler or, putting it in another way, whether immunity from legal proceedings instituted by a non-citizen is to be denied to the Ruler by reason of art 182(2) of the Federal Constitution.

It has been said that in the interpretation of a constitutional instrument, while effect should be given to the language used, recognition should also be given to the character and origins of the instrument. *Minister of Home Affairs & Anor v Fisher & Anor* [1980] AC 319 (PC), applied in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (FC). In the context of immunity from legal proceedings in relation to the Rulers, my brother judge Mohd Azmi FCJ has, in his judgment, dealt with its existence in pre-Merdeka days. This has also been entrenched in the Federal Constitution; art 181 thereof provides:

181(1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within

A their respective territories as hitherto had and enjoyed shall remain unaffected.

(2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity *except in the Special Court established under Part XV.* (Emphasis added.)

B The italicized phrase in art 181(2) above and the provisions of art 182, inter alia, establishing the Special Court in the Federal Constitution were added by the Constitution (Amendment) Act 1993 (Act A848) with effect from 30 March 1993.

On the lifting of sovereign immunity, Lord Denning MR said in C *Trendtex Trading Corp Ltd v Central Bank of Nigeria* [1977] 1 All ER 881 at p 888:

> The doctrine of sovereign immunity is based on international law. It is one of the rules of international law that a sovereign state should not be impleaded in the courts of another sovereign state against its will. Like all rules of international law, this rule is said to arise out of the consensus of the D civilized nations of the world. All nations agree on it. So it is part of the law of nations.
>
> To my mind this notion of a consensus is a fiction. The nations are not in the least agreed on the doctrine of sovereign immunity. The courts of every country differ in their application of it. Some grant absolute immunity. Others grant limited immunity, with each defining the limits differently. E There is no consensus whatever. Yet this does not mean that there is no rule of international law on the subject. It only means that we differ as to what that rule is. Each country delimits for itself the bounds of sovereign immunity. Each creates for itself the exceptions from it.

To permit a foreigner to sue the Rulers would be a substantial alteration F to the position and privileges of the latter. Such a situation ought not, in my view, be taken to have been intended except by clear and unequivocal words to the effect.

It was argued on behalf of the plaintiff that art 155(1) of the Federal Constitution was a permissive provision, and that even though the law of G the Republic of Singapore does not enable a Malaysian citizen to sue her President, our Parliament could nevertheless lawfully confer upon the citizens of Singapore the right to sue our Rulers. Article 155(1) provides:

> 155(1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege it shall H be lawful, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation.

Even assuming (but without deciding) that the above argument of the plaintiff were valid, the doctrine of reciprocity, in my view, assumes I considerable significance, considering that the President of the Republic of Singapore is absolutely immune. To allow a citizen of Singapore to sue the Ruler when the Constitution of the Republic forbids her President to be

sued by a citizen of Malaysia would not be in consonance with the doctrine. But even if that should not be a consideration, clear and unequivocal words or expressions must, in my opinion, be used to remove the immunity if it were the intention of Parliament that a foreigner be allowed to sue the Rulers. Article 182(2) of the Federal Constitution, as it stands, falls short of the effect contended by the plaintiff.

In short, having regard to the principle of sovereign immunity in international law, the immunity of the Rulers existing at least for decades before the formation of Malaysia with its subsequent incorporation in the Federal Constitution; and the concept of reciprocity, it is my view that the ambiguous or imprecise wording in art 182(2) of the Federal Constitution does not entitle the plaintiff, as a citizen of the Republic of Singapore, to sue the Ruler in the latter's personal capacity.

Accordingly, I rule that the defence succeeds in the preliminary objection, and this suit is dismissed.

7 February 1996

Mohd Azmi FCJ: The main issue in the defendant's preliminary objection on point of law concerns the jurisdiction of this court ('the Special Court') to entertain a civil claim by a non-citizen against a Ruler as defined under art 160 cl 2 of the Federal Constitution.

The facts of this case have been summarized elsewhere. Suffice it is to state that after obtaining the necessary consent of the Attorney General under art 183, the plaintiff has filed in this court a libel suit against His Royal Highness the Sultan of Pahang ('HRH') — the sovereign Ruler of one of the nine Malay States, which together with four other states comprised the Federation of Malaysia. The alleged libel arose out of an affidavit deposed by Dato' Michael J Chong, the attorney of HRH (who has since been sued separately by the plaintiff) in an application by originating summons in the High Court at Kuantan, to set aside a private caveat lodged by the plaintiff over a piece of land in Pahang, registered in the name of HRH. It should be immediately observed that, prior to the establishment of the Special Court on 30 March 1993 by the Constitution (Amendment) Act 1993 (Act A848), no one, whether citizen or non-citizen, had the right or privilege to sue HRH in his personal capacity in any of the courts, established under Pt IX of the Federal Constitution, unless HRH had elected to waive his immunity. Prior to the 1993 Amendment, art 181(2) provided:

> 181(2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

Where a Ruler was the plaintiff, he would be deemed to have waived his immunity. In the result, the ordinary civil courts would recognize HRH's capacity to sue, but not his capacity to be sued — this matter being within the Rulers' four attributes, namely, sovereignty, prerogative, powers and jurisdiction. This position has been drastically changed by Parliament when it enacted the Constitution (Amendment) Act 1993. The words

'*except in the Special Court established under Part XV*' have been added at the end of art 181(2). The new Pt XV contains art 182 which provides:

> (1) There shall be a court which shall be known as the Special Court and shall consist of the Chief Justice of the Federal Court, who shall be the Chairman, the Chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers.
>
> (2) Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).
>
> (3) The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the Yang di-Pertuan Agong or the Ruler of a State and all civil cases by or against the Yang di-Pertuan Agong or the Ruler of a State notwithstanding where the cause of action arose.

It would therefore appear from the exclusivity provision of cl (3) that the new art 182 not only has taken away the legal immunity enjoyed by HRH from being sued, but also abolished his rights to sue in the ordinary courts. HRH's capacity to sue, or to be sued, cannot now be recognized by the ordinary courts. As far as the ordinary courts under Pt IX of the Constitution are concerned, they continue as before to have no jurisdiction to hear any civil case against HRH, and in addition they also cease to have jurisdiction to hear all civil cases by HRH. The jurisdiction over these matters, even if the immunity is waived, has now been conferred exclusively on this Special Court.

The principal argument before us, as submitted by Datuk Dominic Puthucheary for HRH, is two-fold. First, he invokes the principle of absurdity in the interpretation of art 181 cl (2) if foreigners are allowed to sue the Rulers in the Special Court, having regard to the restrictive provision with regard to Commonwealth reciprocity imposed by art 155 of the Constitution, read with the concept of sovereignty in international law. Secondly, art 181 cl (2) itself is ambiguous as to whether Parliament intends to confer both citizen and non-citizen plaintiffs with the right or privilege to pursue their claims against the Rulers or the Yang di-Pertuan Agong in the Special Court. In short, are the additional words, '*except in the Special Court established under Part XV*' introduced by the 1993 Amendment sufficient to convey the intention of Parliament as suggested by Mr Karpal Singh. It is HRH's stand that the Special Court is intended only for plaintiffs who are citizens. As such, the plaintiff being a Singapore citizen cannot sue HRH in this court unless expressly allowed by the Constitution. Mr Karpal Singh for the plaintiff disagrees. He says it is the intention of Parliament that the Special Court is meant for every litigant, including non-citizen. Mr Karpal Singh's main argument is that the language used, particularly the words '*No proceedings*' in art 181(2), are clear and there is no necessity to provide expressly that the right to sue the Malay Rulers in the Special Court extends to non-citizen. He relies heavily on the equality provision of art 8(1) which declares that, '*All persons are equal before the law and entitled to the equal protection of the law.*'

Although both counsel were Members of Parliament at the relevant time and had participated in the passage of the Constitution (Amendment) Bill in Dewan Rakyat, this court, with due respect to both of them, cannot rely on their personal knowledge of the intention of Parliament, nor the intention of the Conference of Rulers when consenting to the constitutional amendments under art 38 cl (4) affecting the Rulers' prerogative. This court must apply the established principle of interpretation, applicable to written constitutions. The Federal Constitution is not an ordinary statute. It is the supreme law of the land, to which all existing and future legislative instruments must be subservient. In this particular case, the Constitutional (Amendment) Act 1993 requires the mandatory consent of the Conference of Rulers under art 38 cl (4) before the amending bill could become law with regard to every amendment directly affecting the privileges, position, honours and dignity of the Malay Rulers. Indeed, under art 159 cl (5), any amendment of art 38 itself is unconstitutional if passed without the consent of the Conference of Rulers.

In interpreting an amendment to a written Constitution, regard should be had not only to the words used by the promulgators of the amending Act, but also to the traditions and usages which have given meaning to those words, and last but not least, to the character and origin of the Constitution under consideration. In *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, Raja Azlan Shah CJ, speaking in a panel of five judges of the Federal Court on the subject of Federal guarantee on State Constitutions under art 71, had this to say at p 32:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21. A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.' The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *AG of St Christopher, Nevis and Anguilla v Reynolds* [1979] 3 All ER 129 at p 136.
>
> It is in the light of this kind of ambulatory approach that we must construe our Constitution. The Federal Constitution was enacted as a result of negotiations and discussions between the British Government, the Malay Rulers and the Alliance Party relating to the terms on which

> independence should be granted. One of the main features is the enumeration and entrenchment of certain rights and freedoms. Embodied in these rights are the guarantee provisions of art 71 and the first point to note is that that right does not claim to be new. It already exists long before Merdeka, and the purpose of the entrenchment is to protect it against encroachment. In other words the provisions of art 71 are a graphic illustration of the depth of our heritage and the strength of our constitutional law to guarantee and protect matters of succession of a Ruler (including election of the Undangs) which already exist against encroachment, abrogation or infringement.

Under art 36, Pt I of the Constitution of the state of Pahang, HRH is the Sovereign, and under art 2, the Sovereign is the fountain head of justice, and of all authority of government in the state and territory of Pahang. The basis of HRH's legal immunity is, therefore, his position as a sovereign Ruler. Under art 71 cl (1) of the Federal Constitution:

> The Federation shall guarantee the right of a Ruler of State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State.

whilst art 38(4) provides:

> No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

By virtue of art 38 and the Fifth Schedule, HRH is a member of the Conference of Rulers for the purpose of giving or withholding consent under art 38(4), and such consent shall be signified by the Rulers' seal in accordance with para 9 of the said Schedule.

The right of HRH to legal immunity is not new. Historically, even before Merdeka, the Malay Rulers have always enjoyed the sovereign immunity from legal proceedings. Thus, in *Mighell v Sultan of Johore* [1894] 1 QB 149, the Sultan was recognized as an independent foreign sovereign of the state of Johor, over whom the courts in England and the whole of the British Empire, including Singapore, had no jurisdiction unless the Sultan submitted to the jurisdiction. *Ridges Constitutional Law* (8th Ed) at p 222 states:

> The immunity enjoyed by foreign Sovereigns or diplomats is an immunity from local process; it does not mean that foreign Sovereigns or diplomats cannot commit offences, but only that proceedings in respect of any offences are barred, unless there is a waiver of privilege by the person entitled to plead it.

Similarly, in *Duff Development Co Ltd v Government of Kelantan & Anor* [1924] AC 797, the state of Kelantan was recognized as a sovereign independent state and its Sultan the sovereign Ruler thereof, and as such, the English courts had no jurisdiction to enforce any arbitration award unless the Kelantan Government had submitted to the jurisdiction of the court.

Thus, in the absence of clear and express provision to that effect, to hold that foreign plaintiffs can sue the Ruler and the Yang di-Pertuan Agong in the Special Court is to admit the absurdity that Malaysia and the

states comprising the Federation have no sovereignty in international law, and would open the floodgate of litigation by foreigners against His Majesty the King himself. Having regard to the serious consequences of Mr Karpal Singh's argument, I am of the view (without having to resort to art 155) that express and very clear words are essential in art 181 or art 182 to admit the interpretation suggested by the plaintiff. The new exception clause in art 181(2) namely, '*except in the Special Court established under Part XV*', is too general and ambiguous to convey the extraordinary alleged intention of Parliament to deplete Malaysia's sovereignty in international law. The amending words used by the Parliamentary draftsman and passed by Parliament are not clear and throw no light on the question at issue raised in the preliminary objection. As stated by Lord Simon in *Farrell & Anor v Alexander* [1977] AC 59 at p 81:

> ... in the construction of all written instruments, including statutes, what the court is concerned to ascertain is, not what the promulgators of the instruments meant to say, but the meaning of what they have said ...

The other absurdity is that the plaintiff cannot sue the President of her own country, she cannot sue HRH in Singapore, nor in the Malaysian courts, but now she wants to sue HRH in the Special Court. On the interpretation of statute, it has been held that:

> *the first rule of the construction of the statute is to give the words the ordinary and natural meaning; but it is also a recognized canon of construction that where the language is not clear and unequivocal, the legislature should not have been taken to have intended any substantial alteration of the existing law by words of its import.*' (see *Veerabhadrappa v Firm of Marwadi Vannajee Vajanjee & Ors* (1918) AIR Madras 1100).

Further, long before *Duport Steels Ltd & Ors v Sirs & Ors* [1980] 1 WLR 142 was decided, the court in India had already held in *Shatrughan Singh & Ors v Kedar Nath* (1944) (31) AIR Allahabad 126 that:

> Where the words of a statute are clear and unambiguous it is the duty of the courts of law to give those words their natural meaning even though such interpretation leads to apparent anomalies. But when the words are not clear and throw no light on the question at issue it is open to the Courts to put such construction upon those words as would avoid anomalies and absurdities and give effect to the intention of the Legislature as disclosed by the enactment.

Why must HRH challenge the capacity of foreign plaintiffs to sue him in this court? Is that not the intention of Parliament to which the Conference of Rulers has given its consent? Inherent in the argument of Datuk Puthucheary is the argument that the Conference of Rulers, in which HRH is a member, has never consented to foreign citizen being conferred with the right and privilege to sue in the Special Court, although the Conference consented to the establishment of the Special Court to enable citizens to prove their claims against them. There is no necessity to do so, but a perusal of *Hansard* does not disclose anything to indicate any

A intention to include foreign citizens, as the entire reason for the amendment is purely domestic in nature (see Jilid II Bil 67–70 of Dewan Rakyat proceedings on 18 and 19 January and 8 and 9 March 1993).

When dealing with the consent of the Attorney General under art 183, Mr Karpal Singh argues in his further written submission that:

B

> There is an essential difference to my mind between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case. Full consideration is required for consent since 'consent' is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side [1 *Stroud* (3rd Ed) at p 582.]

C

Similarly, under art 38 cl 4:

> No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

Consent is:

D

> an act of the human will acquiescing in a mental judgment or deciding to implement it. Consent always implies freedom of judgment, deliberation and freely given acquiescence in what is considered desirable. There is free consent only if the person is not blinded by anger, or intoxicated or ignorant or deceived, subject to duress or overreached (see *David & Walker, Oxford Companion to Law*).

E

The voluntariness of the consent is relevant to every aspect of the constitutional amendment, in view of the contractual basis of the Constitution. To recapitulate, we are here not concerned with consent to the establishment of the Special Court, but consent to the Rulers being sued in this court by foreign litigants.

F

The consent required by art 38(4) is entirely different from the formality of the royal assent under art 68, which merely requires cl 4 certificate of the Speaker of the House of Representatives to prove that the necessary assent had been given. The mandatory consent under art 38(4) is more complex, as it is a consent to amend a fundamental term in a

G

tripartite contract embodied in the Federation of Malaya Agreement 1957 — a contractual term guaranteed by the Federation under art 71(1) that HRH should, inter alia, enjoy and exercise the rights and privileges of a sovereign Ruler in accordance with the state Constitution of Pahang.

Exclusive jurisdiction of this court under art 182(3) presupposes the

H

existence of jurisdiction. The challenge mounted by Datuk Puthucheary goes to the issue of jurisdiction of the Special Court to entertain a civil claim brought by a foreign citizen against a Malay Ruler in his personal capacity, and in so doing, HRH is in fact disputing that consent under art 38(4) has been given by the Conference of Rulers to abolish their legal

I

immunity from being sued by non-citizens. The nature and extent of the consent given under art 38(4) is therefore in dispute. The onus is on the plaintiff to show some evidence, by affidavit or otherwise, that the consent

given by the Conference of Rulers to this special constitutional amendment extends to foreigners, and not meant only for Malaysian citizens. Perhaps the production of the consent under art 38(4) of the Conference of Rulers, as required under para 9 of the Fifth Schedule, might be of assistance. This onus has not been discharged. More importantly, there is no specific provision in the 1993 Amendment Act to provide expressly that foreign plaintiffs can sue the Malay Rulers in the Special Court. Indeed, it cannot be denied that in the absence of express provision, the words used in art 181(2) are capable of more than one interpretation; particularly when construed in the light of the character and origin of the Constitution and the history of legal immunity of the Rulers. In the circumstances, I am inclined to agree that the plaintiff, being a foreign citizen, has no capacity to sue HRH in this Court, unless HRH elects to waive his legal immunity.

In the absence of express provision, and as there is doubt in the meaning of the words used and also doubt in the intention of Parliament and the Conference of Rulers, the presumption of continuity of the Rulers' privilege, sovereignty and prerogative and legal immunity must prevail, as far as foreign citizens are concerned. The legal immunity of HRH from being sued in his personal capacity by a non-citizen must, therefore, remain as before.

Having regard to the character and origin of our Constitution, it is my view that this court being a Special Court outside the scope of art 121, must not assume jurisdiction by assumption or inference. The intention of Parliament might be crystal clear to the legislators and as well as to the Parliamentary draftsman, but that is not sufficient. They must use plain language to convey their intention.

On Mr Karpal Singh's argument that limiting the Special Court only to citizen plaintiffs would be against the equality provision of art 8 cl 1, it must be iterated that the Special Court is neither part of the judiciary as contained in arts 121–131A, nor governed by the Courts of Judicature Act 1964. The courts established under art 121 are open to everyone, but under the doctrine of classification, there is nothing unconstitutional for the Constitution itself to provide for such classification between the Rulers and the people, and between citizens and non-citizens, and limiting the application of the Special Court only to claimants who are Rulers and citizens even in the absence of waiver. As was approved by the Federal Court in *Malaysian Bar & Anor v Government of Malaysia* [1987] 2 MLJ 165 at p 170, following *Datuk Hj Harun bin Hj Idris v PP* [1977] 2 MLJ 155 at pp 165–166:

(a) The first question to be asked is, is the law discriminatory, and that the answer should then be — if the law is not discriminatory, it is good law, but if it is discriminatory, then because the prohibition of unequal treatment is not absolute but is either expressly allowed by the constitution or is allowed by judicial interpretation, we have to ask the further question, is it allowed? If it is, the law is good, and if it is not the law is void.

Mr Karpal Singh has nothing to offer in response to the absurdity argument, except to admit partially at p 5 of his further written submission that it would be absurd if the plaintiff had sued the Yang di-Pertuan Agong when he says:

> However, it is not the Yang di-Pertuan Agong who is the defendant in our case, but the Sultan of Pahang, one of the Rulers in Malaysia. Singapore does not have Rulers. Therefore, there can be no similar situation there of a Ruler being sued in a Court there, special or otherwise. Such a situation cannot possibly arise. Clearly, the provisions of art 155(1) of the Federal Constitution cannot be invoked by the defendant. It would have been different had he been the current Yang di-Pertuan Agong!

If so, then it supports the argument that there should be clear provision in arts 181 or 182 to expressly state that the Special Court is available to foreign citizens only in respect of the Rulers, but not the Yang di-Pertuan Agong. By lumping them together, there is now even greater ambiguity in the contention that Parliament intended to open the door of the Special Court to non-citizens, and in unlimited circumstances, subject only to the consent of the Attorney General.

His Royal Highness' preliminary objection on point of law must necessarily succeed. It follows that the plaintiff's claim should be dismissed with costs.

6 February 1996

Mohd Suffian: The only issue at this stage is whether a non-citizen might sue a Ruler in his personal capacity in the newly-established Special Court. That court was set up by amendments to the Constitution effected by Act A848 in force from 30 March 1993. The pros and cons of arguments have been clearly put in the learned Chief Justice's and my brother Mohd Azmi's judgments, and they have also helpfully reproduced the relevant articles of the Constitution. So I could be brief.

After much anxious thought, I would respectfully agree that Faridah Begum, a non-citizen from Singapore, the plaintiff/respondent (hereinafter referred to simply as 'the plaintiff') does not have the right to sue His Royal Highness the Sultan of Pahang ('HRH') in his personal capacity in the Special Court.

Her case is that, she had a dispute with HRH over land in Pahang and in a civil suit she filed in Pahang, she alleged that she was defamed by HRH. She brought the suit in the Special Court.

Datuk Puthucheary for HRH argued that she, being a non-Malaysian citizen, had no right to sue HRH in the Special Court. He relied strongly on art 155. Mr Karpal Singh, for the plaintiff, argued that she did indeed have the right to sue HRH in the Special Court. He relied strongly on the contrast in language used in art 182 setting up the Special Court and arts

9, 10, 12 and other articles in Pt II dealing with fundamental liberties, popularly known as human rights. He pointed out that certain human rights were conferred on citizens and others on persons. Persons meant both citizens and non-citizens. He submitted that as art 182(3) setting out the jurisdiction of the Special Court used neither the word citizens nor persons, the intention was clearly to embrace both citizens and non-citizens.

Art 182(3) reads:

> The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the Yang di-Pertuan Agong or the Ruler of a State and all civil cases by or against the Yang di-Pertuan Agong or the Ruler of a State notwithstanding where the cause of action arose.

I am unable to accept Mr Karpal Singh's argument. I agree with Datuk Puthucheary that art 155 renders art 182(3) void to the extent that it purports to allow a non-citizen to sue a Ruler in the Special Court. Article 155 reads:

> Commonwealth reciprocity
>
> (1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege it shall be lawful, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation.

In Singapore, its Head of State the President enjoys total immunity and may not be sued by anybody. If, and only if, Singapore amends its Constitution to allow a Malaysian citizen to sue the President in Singapore — in other words, only if there is reciprocity — only then may the Malaysian Parliament confer on a Singapore citizen a similar right or privilege to sue a Ruler in our country. The Singapore Constitution has not been so amended. Giving effect to the very clear language of art 155, I am of the opinion that the plaintiff, a Singapore citizen, has no right or privilege of suing HRH in the Special Court.

The Singapore President is the head of state of a sovereign country; the Ruler of Pahang is not, he is only head of a state of the Federation. He may not, for instance, appoint or receive ambassadors. But, nevertheless, the Pahang State Constitution refers to him in many articles as Sovereign, and so does the Federal Constitution.

Its art 181(1) provides:

> Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers ... within their respective territories as hitherto had and enjoyed shall remain unaffected.

That Article is meant to preserve the pre-Merdeka position of our Rulers who were then regarded as sovereign by British, Malayan and Singapore courts and therefore immune from legal process, a position since modified by Act A484.

7 February 1996

Anuar CJ (Malaya) (dissenting): The facts of the case have been set out in the judgment of the learned Chief Justice and Mohd Azmi FCJ. With respect, I am of the view that Faridah Begum (hereinafter referred to as 'plaintiff') has the right to sue His Royal Highness the Sultan of Pahang ('HRH') in his personal capacity in the Special Court.

I have, with respect, considered the argument in the judgments of the learned Chief Justice, Mohd Azmi FCJ, and the latest view expressed by Mohd Suffian. I am of the view that art 155(1) does not prohibit Parliament from enacting a law giving a non-citizen the right to sue a ruler in Malaysia. Article 155 reads:

> Commonwealth reciprocity
>
> 155(1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege it shall be lawful, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation.

For the purpose of our present case, Commonwealth would mean specifically Singapore. In Singapore, citizens of the Federation are not given any right or privilege to sue the Head of State. The President enjoys complete immunity from being sued by anyone. Neither the Singapore citizen nor the citizen of the Federation is entitled to sue the President. Such being the case, in my view, the question of reciprocity does not arise. It would be different if the citizen of Singapore is given the right to sue but such right is not given to a citizen of the Federation. In that case, one can say there is no reciprocity. It would then be contrary to principle of comity of nations to confer upon the citizens of Singapore the right to sue the Ruler. It would be considered unlawful under art 155(1).

If the position in Singapore is that both the citizens of Singapore and citizens of the Federation are conferred with the right to sue the President, the issue is simple and straightforward. In such a situation, clearly it would not be unlawful for Parliament to confer similar right to the citizens of Singapore to sue the Ruler. I would even venture to say that this could happen even where the citizen of the Federation himself is not given similar rights in the Federation. It would, of course, be absurd and unthinkable that it would happen. In the case before us, the situation in Singapore is not to be regarded as something which falls under the purview of art 155(1).

It is significant to note that art 155(1) speaks of the Commonwealth. It does not speak of any other country. If the article is to be understood as restrictive law, then its application would only be restricted to citizens of the Commonwealth countries. That being the case, Parliament is not restricted or prohibited from legislating a law conferring rights or privileges to non-citizens who are citizens of countries other than the Commonwealth. Except for the restriction in art 155(1), it would appear that parliament

may by law confer rights or privileges to either citizens of the federation or to non-citizens who are citizens of countries other than the Commonwealth, or to both citizens and non-citizens who are citizens of those countries. This surely is not consonant with the intention of the Constitution which is to protect our citizens.

For our purpose, the court should confine its deliberations on the interpretation of the clear meaning of the law. Article 182 does not state specifically who can sue a Ruler. The provisions of art 182 emphasize on the fact that the Special Court has exclusive jurisdiction to try cases by or against the Yang di-Pertuan Agong or the Ruler of a State. It is significant to note that art 182 does not mention the words 'citizens', 'non-citizens' or 'persons'. To my mind, the intention is to include all and not just citizens of the Federation only. I am of the view that Parliament has opened the door for anyone, whether citizen or non-citizen, to bring a suit against a Ruler in the Special Court. If it was the intention of Parliament to restrict the right to bring a suit in the Special Court to citizens of the Federation only, then the provisions of art 182 would have been worded differently by expressly stating that the provisions apply only to citizens and to no one else.

In the Constitution, the word 'persons' and 'citizens' are used to give their specific meaning. These words are found in the Constitution used in different contexts. Where the word 'citizens' is used, it is clear that that provision applies to citizens only. If the word 'persons' is used, then it refers to both citizens and non-citizens. It would follow from there that when the law is silent, and neither the word 'citizens','non-citizens' nor 'persons' is used, then the law must have intended that the provisions apply to anybody. I would, with respect, adopt the argument of his Lordship Thomson CJ in the case of *Lee Lee Cheng v Seow Peng Kwang* [1960] 26 MLJ 1, where at p 3 his Lordship said:

> It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here used repeatedly.

It must be noted that art 182 is a new provision added to the Constitution specifically to set up a Special Court for the Rulers. The Rulers can only sue or be sued in this court. Since this provision is a part of the Constitution itself, it must be distinguished from any other enactment promulgated by Parliament. An Act of Parliament which provides laws for the smooth administration of the government would naturally be subject to the Constitution. A provision in the Constitution, unless otherwise clearly stated, would not be subject to the other provisions in the Constitution.

It is significant to note that, unlike art 181 under Pt XIV, art 182 which falls under Pt XV of the Constitution has been promulgated without any limitation. Article 181 clearly states that it is to be read 'subject to the provisions of this Constitution'. There is no similar provision made in art 182. Whereas art 181 must be construed subject to the other provisions in

A the Constitution, art 182 is not to be so construed and is, therefore, in my view, not subject to art 155.

Lastly, I would briefly express my view that even if the court allows the plaintiff to proceed with the suit, she may not succeed in her claim. Her claim is in the nature of a libel suit. She is suing HRH for publication
B of libellous statement in his affidavit. The plaintiff claims that it is libellous because the statement is made outside the jurisdiction of the court. With respect, I am unable to accept that. The affidavit was filed in the court of law and would, therefore, to my mind, be absolutely privileged. Even if the suit is filed in the court without jurisdiction, nonetheless, it is still a suit brought about in the court of law and therefore, whatever is said in the
C case would be protected under the principle of absolute privilege.

For the above reasons, with respect, I would dismiss the preliminary objection of the defendant.

Defendant's preliminary objection allowed, by a majority of 4:1.

D

Reported by Prof Ahmad Ibrahim

E

F

G

H

I